

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

September 23, 2011

N440 STATE MAIL
James T. Vaughn Correctional Center
Kermit R. West
SBI: 0004
1181 Paddock Road
Smyrna, DE 19977

Re: *State of Delaware v. Kermit R. West*
ID 7307000001

Dear Mr. West:

I have received your first postconviction relief motion pertaining to your 1962 convictions for two counts of Murder in the First Degree for the shooting deaths of Mamie Hester Whaley and Lorenzo Byrd Whaley. You raise numerous issues, including but not limited to the circumstances of your guilty plea. You request an evidentiary hearing, a change in venue and a court-appointed attorney. Having reviewed the record and your motion, I find that your motion has no merit.

Your convictions were handed down by then Judge Christie on September 14, 1962, following entry of your guilty plea to the two murder charges.¹ You did not file an appeal.

The record does not show any filings under the previous version of Rule 35, which governed both sentence modifications and postconviction issues.² Rule 61 was adopted in 1987, and included a three-year limitation period for filing postconviction motions. Rule 61 instituted procedural changes only, and may therefore be applied to a conviction which became final before

¹The record shows that you were represented by H. Edward Maul, Esquire, and John J. McNeilly, Esquire.

²*Bailey v. State*, 588 A.2d 1121, 1124-27 (Del. 1991).

the adoption of Rule 61 in 1987.³ Your first Rule 61 motion was filed July 15, 2011.

Before addressing the substantive merits of a Rule 61 motion, the Court must apply the Rule's procedural requirements.⁴ The 1987 version of Rule 61 provided that a postconviction motion must be filed within three years of the date the conviction became final. Because you did not file a direct appeal, your conviction became final, for postconviction purposes, on October 14, 1962. Rule (m)(1). Nor did you file a motion with this Court under the earlier version of Rule 35, which contained no time bar. Even assuming that the clock did not begin to run until 1987 and that you had three years to file your first postconviction relief motion, your 2011 postconviction motion seeking relief is time barred under Rule 61(i)(1).

You sent letters to the Chief Justice Christie about the way Corrections was computing your sentences. Then Judge Lee wrote you a detailed letter explaining your sentences, dated February 5, 1990. The parole issue is therefore barred under Rule 61(i)(4) as having been formerly adjudicated.

Moreover, your claims for relief that are conclusory and unsubstantiated. You state that your rights were violated in numerous ways, but you do nothing more than recite legal principles. Under Rule 61(i)(3), the Court will not address such claims.⁵ You do not allege under Rule 61(i)(5) that these legal principles have been recognized for the first time after your conviction became final.⁶

Having reviewed the record and your motion, it plainly appears that you are not entitled to the relief you are seeking. Under Rule 61(d)(4), your motion is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

³*Id.* at 1124.

⁴*Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵*Id.*, at 555.

⁶*Id.*

cc: Prothonotary